

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4036 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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RAJESH PITAMBER POPAT

Versus

STATE OF GUJARAT

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Appearance:

MRS MADHUBEN SHARMA for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/12/1999

ORAL JUDGEMENT

1. The petitioner was detained under the PASA by virtue of an order passed by the Commissioner of Police, Rajkot city, Rajkot, on 3rd March 1999 under section 3[1] of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for short]. The grounds of detention indicate that the petitioner was involved in as many as six offences relating to the theft of scooters. Two statements of

anonymous witnesses were considered. The authority exercised powers u/s 9[2] of the PASA Act after recording subjective satisfaction for the purpose and claimed privilege. The authority concluded that the petitioner is a dangerous person and requires to be detained under the PASA Act as resorting to a less drastic remedy may not yield the result of immediately preventing the petitioner from pursuing his illegal and anti social activities. The authority also recorded that the petitioner is in judicial custody, but he may get bailed out and pursue his illegal and anti social activities and therefore, the order came to be passed.

2. By this petition under Article 226 of the Constitution of India, the petitioner challenges the order of detention mainly on the ground that he was in custody when the order was passed and there was no material with the detaining authority to apprehend release of the petitioner on bail in absence of bail application. The detention is therefore vitiated and the petition may be allowed.

3. Mr. Bhatt appearing for Ms. M.S.Sharma, learned advocate appearing for the petitioner has restricted his arguments only on this ground.

4. Mr. D.P.Joshi, learned AGP has opposed this petition. He submitted that the authorities have considered all relevant aspects and after being subjectively satisfied about the need, the order is passed.

5. It transpires from the grounds of detention that admittedly, the petitioner was in judicial custody when the order was passed and the application was preferred. It also appears considering the phraseology employed in the grounds of detention that the detaining authority had only anticipated application for bail by the petitioner and there was no material to arrive at a subjective satisfaction about the detinue being released on bail. In fact, the chances of preferring the bail and get bailed out by the petitioner were non-existent when the order was passed. Therefore, in view of the principles laid down by the Supreme court in case of AIR 1989 SC 2265 in the case of Abdul Razak Abdul Wahab Shaikh v/s S.M. Sinha, Commissioner of Police, Ahmedabad, the order of detention stands vitiated.

6. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Rajkot city, on 03rd of March, 1999 in respect of the

detenue Rajesh Pitambar Popat, is hereby set aside. The detenue be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[ A.L.DAVE, J. ]

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